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Count Hamford
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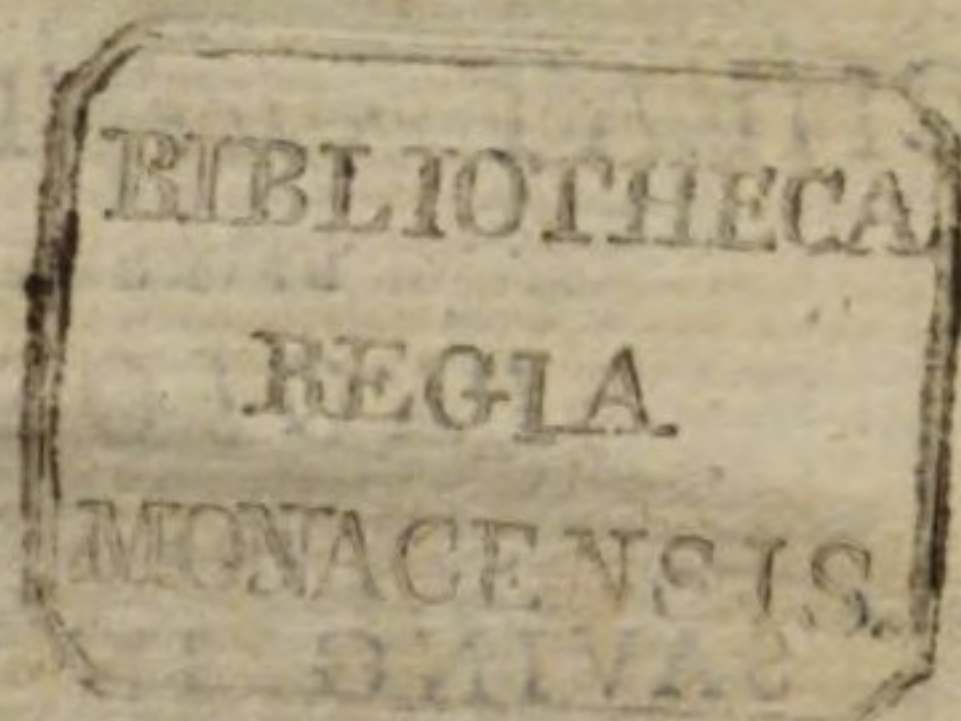
Supply without Burthen;
OR
ESCHEAT *vice* TAXATION:
BEING A
PROPOSAL
FOR A
SAVING IN TAXES
BY AN
Extension of the Law of Escheat:
INCLUDING
STRICTURES on the TAXES
ON
COLLATERAL SUCCESSION,
COMPRIZED IN THE
Budget of 7th Dec. 1795.
To which is prefixed,
(Printed in 1793, and now first published,)
A PROTEST
AGAINST
LAW TAXES:
SHEWING THE
Peculiar Mischievousness of all such Impositions
as add to the Expense
OF
An Appeal to Justice.

By JEREMY BENTHAM,
OF LINCOLN'S-INN, ESQ.

LONDON:

Printed for J. DEBRETT, opposite Burlington-House,
Piccadilly.

1795.



Excerpt of the law of Richard I
STRICTURE: the law

COLLATERAL SUCCESSION
COMES IN THE

Image of the Law
Treated in
(Printed in 1733 and now in the library)
A PROTEST

B. N. W. T. A. E. S.
STRICTURE AND
Treatise on the stricture of all such persons
as to the expenses

in respect to Justice

By JEREMY BENTHAM
OF LINCOLN'S INN, ESQ.

LONDON:
Printed by J. DENTON, in the Strand, near St. Dunstons Church.
1733.

P R E F A C E.

OF the two essays now laid before the Public, that which presents a new resource was submitted to the proper authority in the month of September, 1794, but was not fortunate enough to be deemed worth further notice. The arguments which it contains will speak for themselves: none were controverted, nor any hinted at on the other side; only, as a matter of fact, it was observed,

that it had not been customary of late for the *Crown* to avail itself of the branch of prerogative here proposed to be cultivated for the *public* use.

Nobody can suppose, that the Minister would not gladly have availed himself of this, as of any other, source of supply, had it promised, in his conception, to conciliate the voice of the public in its favour. Nobody can suppose, that, if the apprehensions that occurred in prospect should ever be dispelled by the event, the sense of the public would find him backward in conforming to it. It is natural, that the difficulties attending a measure of considerable novelty and magnitude, should strike with a
2 force

force proportioned to the responsibility of the situation to which the measure is presented. It is natural, that they should strike with less than their proper force, on the imagination of him in whose conception it received its birth.

The idea had been honoured with the approbation of several gentlemen of eminence at the bar, some of them in Parliament, as many as had had the paper in their hands. If they were right in their wishes in its favour, it by no means follows, that those to whom it was submitted in their official capacities, did otherwise than right in declining to make use of it. Of all the qualifications required

quired at the Board to which it was presented, one of the most indispensable is *the science of the times* ; a science which, though its title to the name of *science* were to be disputed, would not the less be acknowledged to be in the situation in question, *fairly* “ *worth the seven.*” For that master-science none can have higher pretensions than the illustrious chief of that department, none less than the author of these pages.

Neither his expectations, nor so much as his wishes, in relation to this proposal, had extended so far as to its immediate adoption. It now lies with the public, who, in due time, will grant or refuse it their passport
to

to the Treasury and to Parliament, according to its deserts.

The "*Protest against Law-Taxes*" had better fortune: it received from the candour of the Minister on whose plans it hazarded a comment, all the attention that candour could bestow; and, if I do not misrecollect, the taxes complained against did not afterwards appear.

The publication of it in this country was kept back, till the proposal for a substitute to the tax complained of should be brought into shape: upon the principle of the parliamentary notion, which forbids the producing an objection to a tax, without a proposal for a better on the back of it,

it. The two essays seemed no unsuitable accompaniments to each other: mutual light promised to be reflected, by the contrast between the best of all possible resources and the worst.

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A PROTEST  
AGAINST  
LAW-TAXES.

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**T**AXES on law-proceedings constitute in many, and perhaps in all nations, a part of the resources of the state. They do so in Great Britain: they do so in Ireland. In Great Britain, an extension of them is to be found among the latest productions of the budget: in Ireland a further extension of them is among the measures of the day. It is this impending extension that calls forth the publication of the present sheets, the substance



of which has lain upon the shelf these many years.

It is a well-known parliamentary saying, that he who reprobates a tax ought to have a better in his hand.\* A juster condition never was imposed. I fulfil it at the first word.—My better tax is——any other that can be named.

The people, when considered with a view to the manner in which they are affected by a tax of this description, may be distinguished into two classes: those who in each instance of requisition have wherewithal to pay, and those who have not: to the former, we shall find it more grievous than

\* It confines itself of course to public men, or what comes to the same thing, private men speaking in the character of public. As for individuals aggrieved, they have performed their part when they have stated their own grievance.



any other kind of tax, to the latter a still more cruel grievance.

Taxes on consumption cannot fall but where there is some fund to pay them: of poll taxes, and taxes on unproductive property the great imperfection is, that they may chance to bear where such ability may be wanting. Taxes upon law proceedings fall upon a man just at the time when the likelihood of his wanting that ability is at the utmost. When a man sees more or less of his property unjustly withholden from him, then is the time taken to call upon him for an extraordinary contribution. When the back of the innocent has been worn raw by the yoke of the oppressor, then is the time which the appointed guardians of innocence have thus pitched upon for loading him with an extra-



ordinary burthen.\* Most taxes are, as all taxes ought to be, taxes upon affluence: it is the characteristic property of this to be a *tax upon distress*.

A tax on bread, though a tax on consumption, would hardly be reckoned a good tax: bread being reckoned in most countries where it is used, among the necessaries of life. A tax on bread, however, would not be near so bad a tax as one on law-proceedings: A man who pays to a tax on bread, may, indeed, by reason of such payment, be unable to get so much bread as he wants, but he will always get some bread, and in proportion as he pays more and more to the tax, he

\* Even in the instance of a defendant, or when the wrong is not pecuniary, the hardship of a double yoke does not cease: for the natural expence of litigation is a burthen which this artificial one finds pressing on him in any case.

will



will get more and more bread. Of a tax upon justice, the effect may be, that after he has paid the tax, he may, without getting justice by the payment, lose bread by it: bread, the whole quantity on which he depended for the substance of himself and his family for the season, may, as well as any thing else be the very thing for which he is obliged to apply to justice. Were a three-penny stamp to be put upon every three-penny loaf, a man who had but three-pence to spend in bread, could no longer indeed get a three-penny loaf, but an obliging baker could cut him out the half of one. A tax on justice admits of no such retrenchment. The most obliging stationer could not cut a man out half a *latitat* nor half a *declaration*. Half justice, where it is to be had, is better than no justice: but without



buying the whole weight of paper, there is no getting a grain of justice.

A tax on necessaries is a tax on this or that article, of the commodities which happen to be numbered among necessaries: a tax on justice is a tax on all necessaries put together. A tax on a necessary of life can only lessen a man's share of that particular sort of article: a tax on justice may deprive a man, and that in any proportion, of all sorts of necessaries.

This is not yet the worst. It is not only a burthen that comes in the train of distress, but a burthen against which no provision can be made.

All other taxes may be either foreseen as to the time, or at any rate provided for, where general ability is not wanting: in the instance of this tax, it is impossible to foresee the moment of exaction, it is equally impossible to provide



provide a fund for it. A tax to be paid upon the loss of a husband, or of a father on whose industry the family depended, a tax upon those who have suffered by fire or inundation would seem hard, and I know not that in fact any such modes of taxation have ever been made choice of: but a tax on law proceedings is harder than any of these. Against all those misfortunes provision may be made; it is actually made in different ways by insurance: and were a tax added to them, pay so much more, and you might insure yourself against the tax. Against the misfortune of being called upon to institute or defend one's self against a suit at law, there neither is, nor can be, any *office of insurance*.\*

\* I say there never can be: in those other instances the event insured against is always some very simple event, such as the death of a person,  
which



Such is the cruelty of this species of tax, to those who have wherewithal to pay, and do pay to it accordingly. To those who do not, it is much more cruel: it is neither more or less than *a denial of justice*.

Justice is the security which the law

which in the ordinary course of things is not open to dispute. Here the incident which calls for contribution, is not only disputable, but by the supposition is actually in dispute. Nothing less than litigation can ascertain legally, whether litigation has been necessary. Have you engaged with a man for his paying you a sum of money whenever it shall become necessary for you to institute or defend yourself against a law-suit?—wait till the suit is at an end, and you will know whether he ought to pay you. A society indeed, and a very laudable one, has been established for purposes which come under this head: but the relief it affords is confined not only to criminal cases, but to a certain description of criminal cases; nor could it be rendered any thing like co-extensive with the grievance.

provides



provides us with, or professes to provide us with, for every thing we value, or ought to value : for property, for liberty, for honour, and for life. It is that possession which is worth all others put together : for it includes all others. A denial of justice is the very quintessence of injury, the sum and substance of all sorts of injuries. It is not robbery only, enslavement only, insult only, homicide only : it is robbery, enslavement, insult, homicide, all in one.

The statesman who contributes to put justice out of reach, the financier who comes into the house with a law tax in his hand, is an accessory after the fact to every crime : every villain may hail him brother, every malefactor may boast of him as an accomplice. To apply this to intentions would be calumny and extravagance.

But



But as far as consequences only are concerned, clear of criminal consciousness and bad motives, it is incontrovertible and naked truth.

*Outlawry* is the engine applied by the law, as an instrument of compulsion to those who fly from civil justice. Outlawry is the engine employed as an instrument of punishment, against the most atrocious of malefactors. This self-same load of mischief, the financier with perfect heedlessness, but with unerring certainty, heaps on the head of unsuspected innocence. Besides outlawry, which in the cases where the offender could not otherwise be affected, comes in as subsidiary in lieu of other punishment, there are certain offences for which a man is subjected, expressly and in the first instance, to a similar punishment, under the name of *forfeiture of the protection*



*rection of the law.* The same fate attends a man thus at different periods, according to his merits. If guilty, it lays hold of him after conviction, for a particular cause, and without excluding the hope of pardon: if innocent, and poor, and injured—before conviction, and without conviction, and for no cause at all, and as long as he continues poor, that is as long as he lives.

What a contrast! What inconsistency! The judge and the legislator, deliberating with all gravity, each in his separate sphere, whether to inflict or not this heavy punishment, on this or that guilty individual, or narrow description of guilty individuals. The legislator on the other hand, merely to get a little money which he could better get from any other source whatever, heaping the same  
doom



doom upon thousands, not to say millions, of innocent and injured subjects, without consideration or remorse.

Mark well, that of all sorts of men it is the poor, and they the more certainly in proportion to their poverty, that are despoiled in this way of the protection of the law: the protection of the law, that inestimable jewel, which in the language of that very law is defined the citizen's universal and best birth right: the poor and him that has none to help him, these are they to whom the help of the law is thus unfeelingly refused. The rich, were it from them that this great safeguard were withholden, have shields of their own to ward off the attacks of injury: the natural influence of wealth, the influence of situation, the power of connection, the advantages of education and intelligence, which go hand



hand in hand with wealth. The poor has but one strong hold, the protection of the law : and out of this the financier drives him without vouchsafing him a thought, in company with the herd of malefactors.

The poor, on account of the ignorance and intellectual incapacity inseparably attached to poverty, are debarred generally, as perhaps it is necessary, were it only for their own sake, they should be universally, from the sweets of political power : but are not so many unavoidable inequalities enough, without being added to by unnecessary injustice ?

Such is the description of those from whom this sum total of all rights is torn away with one hand, while tendered with the other : what are their numbers in proportion to the sum total of subjects ? I fear to say—perhaps

two



two thirds, perhaps four fifths, perhaps nine tenths: but at the lowest computation a vast majority.\*

A third

In England, the expence of carrying through a common action cannot be less than about 24*l*. at the lowest rate, on the plaintiff's side alone. [See Schieffer on Costs, 1792.] The average expence of civil suits of all sorts, taking equity causes into the account, can surely not be rated at less than double that amount, on that one side. The average expenditure of an English subject, infants and adults, rich as well as poor, taken together, has been computed by Davenant (as quoted on this occasion somewhere by Adam Smith) at 8*l*. a year. Six years income then is what a man must have in advance, before he can be admitted to take his chance for justice. Of many estimates which Dr. Anderson had met with, 20*l*. was the highest, and he takes but ten pounds. [Interest of Great Britain with regard to her colonies, London, 1792.] No man then we may say at any rate, can have the benefit of justice, in the ordinary way, either in making good a just claim, or saving himself from an unjust



A third description of persons may yet be distinguished, whose condition under the system of law-taxes is still more deplorable, than that of either of the other two: I mean those, who having wherewithal, to pay the imposition at the commencement of the suit, and during more or less of its progress, see their substance swallowed up by the taxes before the termination of it. The two preceding modifications of abuse, either of them bad enough, are thus put together, and compounded into a third.

Considered with a view to the treatment given to persons of this description, who cannot find for this purpose alone, a sum equal to several years of a man's income. From this statement it needs not much study to perceive that for the bulk of the community, as far as ordinary cases of the civil kind are concerned, *justice* is but an empty name.

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them down and run away with it. The difference is, that any man may choose whether he will prick in the belt of the unlicenced sharper, nor are any but the rawest louts to be so deluded: whereas the wisest men may be inveigled in, as well as the stoutest dragged in, by the exalted and commissioned plunderers——so much surer is their game.—For were the list of law taxes ever so familiar, and ever so easy to be understood, it is impossible for a man to know before hand, whether he has wherewithal to pay the bill, because it is impossible for him to know what incidents may intervene to lengthen it. Were a man even to sit down, and form a resolution to submit to every injury which he could not afford to prosecute for, and to plead guilty to every accusation which he could not afford to defend himself against,



against, even at this price he could not save himself from the hardship of paying for justice, aggravated by the still greater hardship of not getting it.

If in all cases the practice is wicked, in some it is more particularly preposterous. In civil causes, and other causes where the injury to individuals affords a natural interest to prosecute, artificial expences are cruelty and breach of faith : in a large class of penal causes, in which for want of such natural interest, prosecutors must be engaged by factitious inducements, or the law be a dead letter, the cruelty and treachery are crowned by blunder and inconsistency. Beckoned into court with one hand, men are driven away with the other. But, costly as the attractive power frequently is, the repulsive force is apt to be much stronger. Reward is subsequent, distant, uncertain, and dependent upon success.

Trouble



Trouble, expence, and odium are certain and precedent.\*

In favour of this species of imposi-

\* This species of tax would stand absolutely alone in point of depravity, were it not for the tax on drugs, as far as it extends to those used in medicine. This, as being also a tax upon distress, is so far in specie the same, but is nothing to it in degree. To recover a shilling in the way of justice, it will cost you at least 24l. of which a good part in taxes: but to be admitted to buy a shilling's worth of medicine for a shilling, it does not cost you threepence. Hospitals for the sick are not uncommon: there are none for harrassed and impoverished suitors. There are *Lady Bountifuls* that relieve the sick from the tax on medicines, and the price of them into the bargain: but a *Lady Bountiful* must be bountiful indeed, to take the place of attorney and counsel, as well as of physician and apothecary, and supply a poor man with as many pounds worth of *latitats* and *pleas*, as he must have to recover a shilling. A man cannot, as we have seen, insure himself against lawsuits: but a man may insure himself, and many thousands actually do insure themselves, against sickness. But these reliefs are neither certain nor



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As to the notion of a connexity in this case betwixt the benefit and the burthen, it has been countenanced by an authority too respectable, not to deserve the most serious notice :\* but come it from whom it will, it is a mere illusion. The persons on whom the whole of the burthen is cast, are precisely those, who have the least enjoyment of the benefit: the security which other people enjoy for nothing, without interruption, and every moment of their lives, they who are so unfortunate as to be obliged to go to

\* Dr. Adam Smith, *Wealth of Nations*.



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Litigation may in this point of view be compared to war in sober sadness, as war has been to litigation in the



the way of pleasantry. The suitor is the forlorn hope in this forensic warfare. To throw upon the suitor the expence of administering justice, in addition to the trouble and the risk of suing for it, is as if, in case of an invasion, you were to take the inhabitants of the frontier, and force them, not only to serve for nothing, but to defray of themselves the whole expenditure of the war.

What in our times is become inveterate practice, is stigmatized as a species of iniquity without a precedent, by Saint Paul. "*Who is there,*" demands the Apostle, "*who is there that ever goes to war at his own charge?*"—"Alas!" cries the poor suitor, "*I do.*"

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*Litigation* is a term not altogether



free from ambiguity. It is used sometimes in a *neutral* sense, to denote the prosecuting or defending a suit, though perhaps more frequently in a bad one. In its neutral sense, it expresses the irreproachable exercise of an essential right: in a bad sense a species of misconduct practised under the notion of exercising such a right.

In the first sense, taxes can never have been recommended by any man as a check to litigation: in this sense, an avowed desire of checking litigation, would be neither more nor less than an avowed desire of denying justice.

In a bad sense again, the word is used on two different occasions: where the suit, whatever be the importance of the matter in dispute, is on the part of the person spoken of as maintaining it, a *groundless* one: and where



where the suit, however well grounded on his part in point of title, is on account of the supposed unimportance of the matter in dispute, deemed a *frivolous*, a *trifling*, a *trivial* one: and in either case, it is of course applicable to the situation of either plaintiff or defendant; though it is apt to fix in the first instance and most readily upon the situation of the plaintiff, as being the party, who by taking the first step on the commencement of the suit, exhibits himself as the author of it.

On either side, litigation, when *groundless*, may be accompanied or not, with what the lawyers call *in genere malitia*, meaning *consciousness of misdoing*, and in this particular case *mala fides*, consciousness of the groundlessness of the action or defence, consciousness of the *want of merits*.

Where merits are wanting, but  
there



there exists no consciousness of the want, taxes on law-proceedings do, it must be confessed, operate as a check to litigation ; and that as well on the side where it is groundless as on that where it is well grounded, and in the same degree. Indeed as both of two contending parties cannot in point of law be actually in the right, though either or both may think themselves so, the impediment cannot operate to the denial of justice, but it must operate to the prevention of groundless litigation at the same time. Prevent him who is in the right from instituting a suit, you prevent him who is in the wrong from defending one. But neither is litigation prevented, any further than as justice is denied. So far then as this case extends, it is still but the other side of the same effect, the *denial of justice*.

Have



Have they then any peculiar tendency to operate as a check to litigation, when it is not only groundless, but accompanied with a consciousness of its being so?—to *malitious*, or as it might with more propriety be termed, *anti-conscientious* litigation? On the contrary, their direct tendency and sure effect is to produce it.

They produce it on the part of the *plaintiff*.—Were proceedings at law attended with no expence nor other inconvenience, till the suit were heard and at an end, a plaintiff who had no merits, could do a defendant man no harm by suing him: he could give him no motive for submitting to an unfounded claim: malice would have no weapons: oppression would have no instrument. When proceedings are attended with expence, the heavier that expence, the greater of course



course is the mischief which a man who has no merits is enabled to do: the sharper the weapon thus put into the hand of malice, the more coercive the instrument put into the hand of the oppressor.

They produce it on the part of the *defendant*. Were proceedings at law attended with no expence, a defendant who knew he had no merits, a defendant who was conscious that the demand upon him was a just one, would be deprived of what is in some cases his best chance for eluding justice, in others the absolute certainty of so doing: he would lose the strongest incentive he has to make the attempt. A defendant who means not to do justice unless compelled, and who knows that the plaintiff cannot compel him without having advanced a certain sum, such a defendant, if he  
thinks



thinks his adversary cannot raise that sum will persevere in refusal till a suit is commenced, and in litigation afterwards.

Whether they make the litigation, or whether they find it ready made, they shew most favour to the side on which anti-conscientious litigation is most likely to be found. By attaching on the commencement of the suit, they bear hardest upon the plaintiff, or him who if they have suffered him, would have become plaintiff. In so doing they favour in the same degree the defendant, or him who, if the party conceiving himself injured could have got a hearing, would have been called upon to defend himself. But it is on the defendant's side that anti-conscientious practice is most likely to be found. Setting expence out of the question, an evil of which  
these



these laws are thus far the sole cause, setting out of the question the imperfections of the judicial system and the hope of seeing evidence perish, or the guilty view of fabricating it, a man will find no motive for instituting a suit for an ordinary pecuniary demand, without believing himself to be in the right: for if he is in the wrong, disappointment, waste of time, fruitless trouble, and so much expence as is naturally unavoidable, are by the supposition what he knows must be his fate. Whereas, on the other hand, a man upon whom a demand of that kind is made, may, although he knows himself to be in the wrong, find inducement enough to stand a suit from a thousand other considerations: from the hope of a deficiency in point of evidence on the part of the plaintiff, not to mention,  
as



as before, the rare and criminal enterprise of fabricating evidence on his own part: from the hope of tiring the plaintiff out, or taking advantage of casual incidents, such as the death of witnesses or parties: from the temporary difficulty or inconvenience of satisfying the demand, or (to conclude with the case which the weakness of human nature renders by far the most frequent) from the mere unwillingness to satisfy it.

In a word, they give a partial advantage to conscious guilt, on whichever side it is found: and that advantage is most partial to the defendant's side, on which side consciousness of guilt, as we see, is most likely to be found.

Better, says a law maxim subscribed to by every body, better that *ten* criminals should escape, than one inno-

D

cent



cent person should suffer : and this in case even of the deepest guilt. For *ten*, some read a *hundred*, some a *thousand*. Which ever reading be the best, an expedient of procedure, the effect of which were to cause ten innocent persons to suffer for every ten guilty ones, would be acknowledged to be no very eligible ingredient in the system. What shall we say of an institution, which for one culpable person whom it causes to suffer, involves in equal suffering perhaps ten blameless ones.

Thus much for *groundless* suits: there remains the plea of its tendency to check what are deemed *trivial* suits.

I know what a *groundless* suit means—I know of no such thing as a *frivolous* one.—No wrong that I know of can be a trivial one, which to him to whom it is done appears a serious one, serious to such a degree, as to make it worth his while to demand



mand redress at the hand of justice.—  
Conduct is the test of feeling. I know  
of no right I have to set up any  
feelings of my own as the standard of  
those of my neighbour, in contradic-  
tion to a declaration of his, the truth  
of which is evidenced by his own  
conduct. What to one man again is  
trivial, to another man may be of  
high importance. In the account of  
wrong too must be included, not only  
the individual wrong taken by itself,  
but its effects in the way of encou-  
ragement to repetition, and its effects  
in the way of example. I know of  
no wrong so slight, that by multipli-  
cation may not become intolerable.  
Give me but a licence to do to any  
person at pleasure the minutest wrong  
conceivable—I need no more, that  
person is my slave. Allow me to rob  
him though it be but of a farthing,



farthing by farthing, I will find the bottom of his purse. Allow me but to let fall a drop of water upon his head — *gutta cavat lapidem*, the power of striking his head off would be less susceptible of abuse.

In pecuniary cases, the smaller the sum in dispute, the less reserve is used in branding the conduct of the parties with the charge of litigation, of which in such cases the reproach is apt to fall principally if not exclusively, to the plaintiff's share. But the importance of the sum is altogether governed by the circumstances of the parties: the amount of it in pounds, shillings, and pence shews nothing. One man's income may be a hundred, a thousand, four thousand times as great as that of another. In England there are men whose income exceeds 60,000*l.* a year. 15*l.* a year is as much



much as falls to the lot of perhaps the greater number of the whole body of the people. Without a particular caution, a legislator or a judge will naturally enough, like any other man, take the relation of the sum in dispute to his own feelings, that is, its ratio to its own circumstances, for the measure of importance: but by this standard he will be sure to be deceived, as often as the circumstances of the parties, or either of them, are materially different from his own. Fifty pound, for example, will be apt to appear in his eyes an object of considerable importance: an object of which a tenth or a twentieth part, or less, might be of importance sufficient to justify from the charge of litigation, the maintenance of a suit. A shilling would be almost sure to appear to him an object altogether trifling; an object by no means



of magnitude enough to warrant the maintenance of a suit. Fifty pound is however a sum of less importance to a Duke of Marlborough or Bedford, than a single shilling (viz. than a four thousandth part of 50l.) to many a man, in truth to probably the majority of men in the kingdom. It is therefore more unjust, more tyrannical, to refuse to hear the demand of an ordinary working man to the amount of a shilling, than it would be to refuse to hear the demand of a Duke of Marlborough or Bedford, to the amount of 50l. The legislator, who on the plea of checking litigation, or on any other plea, exacts of a working man as a preliminary to his obtaining justice, what that working man is unable to pay, does refuse to him a hearing, does in a word refuse him justice, and that as effectually  
and



and compleatly, as it is possible to refuse it.

That all men should have *equal rights*, not only would be politically pernicious, but is naturally impossible: but I hope this will not be said of *equal justice*.

Trivial causes require no such factitious checks: to such causes were all expences struck off that can be struck off, there are natural checks in abundance, that are unavoidable. There is the pain of disappointment: there is expence, of which a certain measure will every now and then be absolutely unavoidable: there is consumption of time, which to the working classes, that is to the great majority of the people, is expence.

But even let the cause be trivial, and that to such a degree as to render the act of commencing the litigation



tion blameable, the blame is never so great on the side of the party most favoured by the tax, as on the side of the party most oppressed by it. The party most oppressed is the complainant: the party who having suffered the injury such as it is, claims or would claim satisfaction for it at the hands of justice. But, so as there does but exist the smallest particle of an injury, the party who claims satisfaction for it can never be so much in the wrong for doing so, but that he who refuses satisfaction must be still more so. If the demand be just, why did not he comply with it? If just, but trifling, why does he contest it? In this case then you cannot punish in this way the misconduct of one party, without rewarding still the greater misconduct of the other. If the tax applies a check where there is blame,  
it



it affords protection and encouragement where there is still greater blame.

Another injustice.—The poorer a man is, the more exposed he is to the oppression of which this supposed remedy against litigation is the instrument. But the poorer a man is, the less likely he is to be litigious. The less time a man has to spare, and the less a man can afford to expend his time (not to speak of money) without being paid for it, the less likely is he to expose himself to such a consumption of his time.

The rich man, the man who has time and money at command, he surely, if any, is the man to consume it litigiously and frivolously. No wonder however, if to a superficial glance, the poor should appear more litigious than he. There are more of the poor



these laws are thus far the sole cause, setting out of the question the imperfections of the judicial system and the hope of seeing evidence perish, or the guilty view of fabricating it, a man will find no motive for instituting a suit for an ordinary pecuniary demand, without believing himself to be in the right: for if he is in the wrong, disappointment, waste of time, fruitless trouble, and so much expence as is naturally unavoidable, are by the supposition what he knows must be his fate. Whereas, on the other hand, a man upon whom a demand of that kind is made, may, although he knows himself to be in the wrong, find inducement enough to stand a suit from a thousand other considerations: from the hope of a deficiency in point of evidence on the part of the plaintiff, not to mention,

as



as before, the rare and criminal enterprise of fabricating evidence on his own part: from the hope of tiring the plaintiff out, or taking advantage of casual incidents, such as the death of witnesses or parties: from the temporary difficulty or inconvenience of satisfying the demand, or (to conclude with the case which the weakness of human nature renders by far the most frequent) from the mere unwillingness to satisfy it.

In a word, they give a partial advantage to conscious guilt, on whichever side it is found: and that advantage is most partial to the defendant's side, on which side consciousness of guilt, as we see, is most likely to be found.

Better, says a law maxim subscribed to by every body, better that *ten* criminals should escape, than one inno-



than of the rich: and to the eye of unreflecting opulence, the causes of the poor are all trivial ones.

We think of the poor in the way of charity, for to deal out charity gratifies not only benevolence, but pride. We think much of them in the way of charity, but we think little of them in the way of justice. Justice, however, ranks before charity: and they would need less charity, if they had more justice.

What contributes more than any thing to the indignation excited by suits that are deemed trivial and, on account of the triviality *vexatious*, is the excessive ratio of the expence of the suit to the value of the matter in dispute: especially when, the matter in dispute being pecuniary, its minuteness is more conspicuous and defined. But to what is this expensiveness



ness owing ?—As far at least as these taxes are in question, to the legislator himself.—Mark then the iniquity. He is himself the author of the wrong, and he punishes for it the innocent and the injured.

To exclude the poor from *justice* was not enough :— they must be excluded also from *mercy*. Forty shillings is the tax imposed on pardons, by a statute of King William (5. W. c. 21. §. 3.) forty shillings more by another, no more than five years afterwards. (9 and 10. W. c. 25, § 3, 50.) Together, 4l. :—half a year's income of a British subject, according to Davent's computation above quoted. What is called *mercy*, let it be remembered, is in many cases no more than *justice* : in all cases where the ground of pardon is the persuasion of innocence, entertained either notwithstanding

ing



ing the verdict, or in consequence of evidence brought to light after the verdict.\* All punishments are accordingly irremissible, to him who has not to the amount of half a year's income in store or credit: all fines to that amount or under, absolutely irremissible.†

Taxes on law proceedings, so far then from being a check to litigation, are an encouragement to it in every sense in which it is mischievous

\* For instance, the case of Mr. Atkinson.

† It would be curious enough to know what profit the treasury may have drawn from that time to the present, from so extraordinary a friend: certainly not enough to pay the salary of one of the Lord's Commissioners: probably not enough to pay that of his valet de chambre.

These are busy statutes. By the prohibition and sale of Justice, they ran counter to Magna Charta:—by the prohibition of Mercy, they break the Coronation Oath.

and



and blameable.—Would you really check litigation, and check it on both sides?—the simple course would be a sure one. When men are in earnest about preventing misconduct in any line, they annex punishment to misconduct in that line and to that only : a species of misconduct which cannot be practised but as it were under the eye of the court, is of all others the easiest to cope with in the way of law. Deal with misconduct that displays itself under the eye of the court as you deal by delinquency at large, and you may be sure of succeeding to a still superior degree. Discriminate misconduct then from innocence : lay the burthen on misconduct and misconduct only, leaving innocence unoppressed. Keep back punishment, till guilt is ascertained. Keep back costs, as much as possible, till the last stage of  
of



of procedure ; keep off from both parties every thing of expence that is not absolutely unavoidable, where litigation is on both sides without blame : at that last stage if there be found blame, throw whatever expence of which you allow the necessity to subsist beyond what is absolutely unavoidable, throw it on that side and on that side only, where there has been blame. If on both, then if circumstances require punish it on both sides, by fine for instance to the profit of the public.

Litigation though eventually it prove groundless, litigation, like any other course of conduct of which mischief is the result, is not therefore blameable : and where it is blameable, there is a wide difference whether it is accompanied with temerity only, or with consciousness of its own injustice. The countenance shewn to the parties  
by



by the law ought to be governed, and governed uniformly and proportionally, by these important differences.—So much in point of utility:—how stands establishment?—Taxes heaped on in all stages from the first to the last without distinction:—all costs given or no costs, no medium:—costs scarce ever compleat, and nothing beyond costs.—No mitigation, or enhancement, in consideration of pecuniary circumstances. No shades of punishment in this way correspondent to shades of blame:—in most cases no difference so much as between consciousness of injustice and simple temerity, nor so much as betwixt either and innocence. The power of adjudging as between costs and no costs, seldom discretionary:—that of apportioning, never:—nor that of fining beyond the amount of costs:—consequently nor that



that of punishing both parties where both have been to blame. Were a power to be given by statute to impose on a litigious suitor convicted of litigation, a fine to an amount not exceeding what the losing party pays now whether he be blameable or blameless, it would be cried out against perhaps as a great power, too great to be given to judges without juries.\*

*Justice*

\* The distinction between temerity and consciousness of blame, a distinction pervading human nature, and applicable to every species of misbehaviour, is scarce so much as known to the English law. There are scarce words for it in the language. *Temerity* is taken from the Roman law. *Malice*, the term by which English Lawyers seem in some instances to have had in view the expressing consciousness of blame, presents a wrong idea, since in common language it implies *hatred*, an affection which in many instances of conscious guilt, may be altogether wanting :—



*Justice shall be denied to no man, justice shall be sold to no man,* says the first

ing:—instance offences of mere rapacity, such as theft, robbery, and homicide for lucre.

The legislator?—he talk of vexation?—He does every thing to create the evil, he does nothing to remove it.

I happened once to fall into conversation with a man who, from an Attorney, had been made Judge of one of the provinces in America. Justice, I understood from him, was on a very bad footing there: it might be had almost for nothing: the people were very litigious: he found them very troublesome. A summons cost—I forget whether it was three and sixpence, or half a crown. Whom the half crown went to I do not know: one may be pretty certain not to the Judge.—Seeing no prospect of our agreeing, I did not push the conversation far. The half crown seemed to him too little: to me it seemed all too much. The pleasant thing would have been to have enjoyed the salary in peace and quietness, without being plagued with a parcel of low people. Justice would then have been upon the best footing pos-



of statutes, *Magna Charta*. How is it under these later ones?—Denied, as we have seen, to nine tenths of the people, sold to the other tenth at an unconscionable price. It was a conceit among the old lawyers, reported if not adopted by Lord Coke, that a statute made contrary to *Magna Charta*, though made in all the forms, would be a void law. God forbid, that by all the lawyers in the world, or for the purpose of any argument, I should ever suffer myself to be betrayed into any such extravagance: in a subject it would be sedition, in a judge it would be usurpation, in any body it would be nonsense. But after all it must be acknowledged, to be in some degree un-  
 able. He had accordingly a project for checking litigation by raising the fees. I don't know whether it succe<sup>eded</sup>.

fortunate,



fortunate, as well as altogether singular, that, of an instrument deemed the foundation of all liberty, and magnified as such even still, to a degree of fanaticism, a passage by far the most important, and almost the only one that has any application now a days, should be thus habitually trodden under foot, without remorse or reclamation.\*

\* Let us not for the purpose of any argument, give rise or countenance to injurious imputations. Though justice is partly denied, and partly sold, the difference is certainly immense, betwixt selling it for the personal benefit of the king or of a judge, and selling it for the benefit of the public:—betwixt selling it by auction, and selling it at a fixed price:—betwixt denying it for the sake of forcing the sale of it, or denying it to a few obnoxious individuals, and denying it indiscriminately to the great majority of the people. In point of moral guilt, there is certainly no comparison: but in point of political effect, it may not be altogether easy in every



A tax so impolitic and so grievous, a tax thus demonstrated to be the worst of taxes, how comes it ever to have been made choice of, and when made choice of, acquiesced in?—These are not questions of mere curiosity: for acquiescence under a tax, and that so general, forms at first glance no inconsiderable presumption in its favour. A presumption it does form: but when demonstration has shewn itself, presumptions are at end.

How comes the tax to have been made choice of?—One cause we have seen already in another shape; the unscrutinized notion of its supposed tendency to check *litigation*: litigation, which where it stands for mischief, is the very mischief which the

part of the parallel, to say which mode of abuse is most extensively pernicious.

species



species of tax in question contributes with all its power to promote.

Another cause may possibly be, the tendency which this sort of tax has to be confounded in the eye of an inquiring observer, with other sorts, which are either the best of all, or next to the best. The best of all are taxes on consumption, because they not only fall no where without finding some ability to pay them, but that where necessaries are out of the question, they fall on nobody who has not the option of not paying them if he does not choose it. Taxes on property, and those on transfer of property, such as those on contracts relative to property, are the next best: because though they are not optional like the former, they may be so selected as never to call for money but where there is ability, nay even ample abi-



lity, to pay them. Now of these two most supportable classes of taxes, the second are all of them levied by means of *stamps* : taxes on consumption too, in many instances, such as those on cards, dice, gloves, and perfumery, show to the eye as stamp-duties. But all these are very good taxes. Stamp-duties therefore are good taxes: and taxes on justice are all stamp-duties.—Thinking men look to consequences ; they look to the feelings of the individuals affected : acting men look to the stamp: taxes on justice, taxes on property, taxes on consumption are accordingly one and the same object to the optics of finance. Stamp-duties too have another most convenient property, they execute themselves, and law taxes beyond all others : in short they exclude all smuggling.\*

\* Law paper might be forged : but the difficulty would be to issue it.

They



They heap distress indeed upon distress: but the distress is not worth minding, as there is no escaping it.

But the great cause of all is the prospect of acquiescence: a prospect first presented by hope, since realized over and over again by experience. It is too much to expect of a man of finance, that he should anticipate the feelings of unknown individuals: it is a great deal if he will listen to their cries. Taxes on consumption fall on bodies of men: the most inconsiderable one when touched will make the whole country ring again. The oppressed and ruined objects of the taxes on justice, weep in holes and corners, as rats die; no one voice finds any other to join with it.

A tax on shops, a tax on tobacco, falls upon a man if at all immediately, and presses on him constantly: every man knows whether he keeps or



means to keep a shop, whether he means to sell or to use tobacco. A tax on justice falls upon a man only occasionally: it is like a thunder stroke, which a man never looks for till he is destroyed by it. He does not know when it will fall on him, or whether it ever will: nor even whether, when it does fall, it will press upon *him* most, or upon his adversary. He knows not what it will amount to: he has no *data* from which to calculate it: it comes lumped to him in the general mass of law charges: a heap of items among which no vulgar eye can ever hope to discriminate: an object on which investigation would be thrown away, as comprehension is impossible. Calamities that are not to be averted by thought, are little thought of, and it is best not to think of them. When is the time for complaint? Before the thunder-bolt is fallen



fallen, it would be too soon : when fallen, it is too late. Shopkeepers, tobaccoists, glovers, are compact bodies : they can arm council : they come in force to the House of Commons. Suitors for justice have no common cause, and scarce a common name : they are every body and nobody : their business being every body's is nobody's. Who are suitors ? where are they ? what does a Chancellor of the Exchequer care for them ? what can they do to help him ? what can they do to hurt him ? So far from having a common interest, they have repugnant interests : to crush the injured, is to befriend the injurer.

May not ignorance with regard to the quantum and the source of the grievance, have contributed something to patience ?—Unable to pierce the veil of darkness, that guards from  
vulgar



vulgar eyes the avenues of justice, men know not how much of the difficulty of the approach is to be ascribed to art, and how much to nature. As the consumers of tobacco confound the tax on that commodity with the price, so those who borrow or would have wished to borrow the hand of justice, confound the artificial with the natural expence of hiring it. But if the whole of the grievance be natural, it may be all inevitable and incurable, and at any rate it may be no more the fault of lawyers or law makers, than gout and stone are of physicians.—Happy ignorance!—if blindness to the cause of a malady could blunt the pain of it!

There want not apologists-general and talkers in the air, to prove to us that this as well as every thing else, is as it should be. The expence, the delay, and all the other grievances, which



which activity has heaped, or negligence suffered to accumulate, are the prices which, according to Montesquieu, we must be content to pay for liberty and justice. A penny is the price men pay for a penny loaf: therefore why not two-pence? and, if threepence, there would be no harm done, since the loaf would be worth so much the more.

May not a sort of instinctive fellow-feeling among the wealthy have contributed something, if not to the imposition, at least to the acquiescence? It is the wealthy alone, that either by fortune, situation, education, intelligence, or influence, are qualified to take the lead in legislation: and the characteristic property of this tax, is to be favourable to the wealthy, and that in proportion to their wealth. Other taxes afford a man no indemnification for the wealth they take from him:



him: this gives him power in exchange. The power of keeping down those who are to be kept down; the power of doing wrong, and the more generous pride of abstaining from the wrong which is in our power, are advantages too precious not to be grasped at with avidity by human weakness: and as in a country of political liberty, and under a system of justice in other respects impartial, they can only be obtained by a blind and indirect route such as this, the inconvenience of travelling in it, finds on the part of those who are well equipped for it, the more patient an acquiescence.

Will it be said that abolishing the taxes on justice would not answer the purpose, for that supposing them all abolished, justice would still remain inaccessible to the body of the people? — This would be to justify one abuse by



by another. The other obstacles by which the avenues to justice have been blocked up, constitute a separate head of abuse, from which I gladly turn aside, as being foreign to the present purpose. Take off law taxes all together, the number of those to whom justice will still remain inaccessible, would still, it must be confessed, be but too great. It would however not be so great, as it is at present under the pressure of those taxes. Though you could not tell exactly to how many you would open the doors of justice, you might be sure you opened them to some. Though you would still leave the burthen but too heavy, you would at any rate make it proportionably more supportable.

If by taking off these taxes, you reduced the expence of a common action from 25l. to 20l, you might open the door, suppose, to one in five of those



those against whom it is shut at present. Even this would be something: at any rate whatever were the remaining quantum of abuse, which you still suffered to subsist, you would have the consolation at least of not being actively instrumental in producing it. To reform *in toto* a system of procedure is a work of time and difficulty, and would require a rare union of legal knowledge with genius: as repealing a tax may require discernment, candour, philanthropy, and fortitude, but is a work of no difficulty, requires no extraordinary measure of science, nor even so much time as the imposing of one.

But by whatever plea the continuance of the subsisting taxes of this kind may be apologized for, nothing can be said in favour of any new addition to the burthen. The subsisting ones, it may be said, have been acquiesced in, and men are used to them:  
to



in this respect at least they have the advantage of any new ones which could be substituted in the room of them.

But even this immoral plea, which puts bad and good upon a level, effacing all distinction but that between *established* and *not established*, even this faint plea, is mute against any augmentation of this worst of evils.

To conclude—Either I am much mistaken, or it has been proved—that a law tax is the worst of all taxes actual or possible :—that for the most part it is a denial of justice, that at the best it is a tax upon distress :—that it lays the burthen, not where there is most, but where there is least, benefit :—that it co-operates with every injury, and with every crime :—that the persons on whom it bears hardest, are those on whom a burthen of any kind lies heaviest, and that they compose the great majority of the people :—that so far from being a check,



a check, it is an encouragement to litigation: and that it operates in direct breach of Magna Charta, that venerable monument, commonly regarded as the foundation of English liberty.

The statesman who cares not what mischief he does so he does it without disturbance, may lay on law taxes without end: he who makes a conscience to abstain from mischief will abstain from adding to them: he whose ambition it is to extirpate mischief, will repeal them.

*General error makes law*, says a maxim in use among lawyers. It makes at any rate an apology for law: but when the error is pointed out, the apology is gone.

## FINIS.

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The Reader is requested to correct the paging of the second sheet, which should have begun 17 instead of 33, and in page 40, line 4, of that sheet, dele the word "may."



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ESCHEAT  
VICE  
TAXATION.

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§ 1. GENERAL IDEA.

**I**N a former Essay,\* I pointed out the species of tax which, if the reasoning there given be just, is the *worst* of all taxes existing or possible. The object of the present Essay is,

\* Protest against Law Taxes, printed 1793, now first published, and subjoined to the present Essay, Dec. 1795.



2      *Escheat vice Taxation.*

to point out that mode of supply which, for one of so great a magnitude, will, I flatter myself, appear to be absolutely the *best*.

*What is that mode of supply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by any body?*

The question has the air of a riddle; but the proposition it involves, paradoxical as it may appear, is not more strikingly paradoxical than strictly true.

The answer is—an extension of the existing Law of *Escheat*; a law coeval with the very first elements of the constitution: to which I would add, as an aid to its operation, a correspondent *limitation*, not an *extinction*, of the power of *bequest*.

Of



Of the extended Law of Escheat, according to the degree of extension here proposed, the effect would be, the appropriating to the use of the public all vacant successions, property of every denomination included, on the failure of *near relations*; will or no will, subject only to the power of bequest as hereinafter limited.

By near relations I mean, for the purpose of the present proposal, such relations as stand within the *degrees* termed *prohibited* with reference to marriage.

As a farther aid to the operation of the law, I would propose, in the instance of such relations *within the pale*,\* as are not only childless, but *with-*

\* To save circumlocution, relations whom, under this or any other definition of *near relations*,



*without prospect of children,\** whatever share they would take under the existing law, that, instead of taking that share in *ready money*, they should take only the interest of it, in the shape of an *annuity for life*.

It would be a farther help to the operation of the measure, and (if confined to the cases where from the nature of the relationship the survivor is not likely to have grounded his plans of life upon the expectation of the succession, or otherwise to have placed any determinate dependence

tions, I should propose to exclude, I shall term relations *without the pale*; those whom I should propose *not* to exclude, relations *within the pale*.

\* Say, in the instance of females, 48; in the instance of males, 60, if no child within five years past; or 55, if married to a wife above 48.

on



on it) may scarcely if at all be felt, if in such instances, although the relationship be *within* the pale, the public were to come in for a share in the succession, (suppose an *equal* share) though not the whole. This may be applied to the case of the uncle and aunt, to the case of the grandfather and grandmother, and, perhaps, unless under particular circumstances, to the case of the nephew and niece.

With regard to *family settlements*, the persons whose benefit they have in view will be found provided for with few or perhaps no exceptions, by the reservations made in this plan in favour of relations *within the pale*. To make provision for the cases where, in virtue of an old settlement, an estate might devolve to a relation *without the pale*, I would  
pro-



propose to add a proviso, that where-  
ever the deceased, had he been of  
full age, could, by his single act,  
have cut off the entail, it shall be as  
if he had actually done so, for the  
purpose of excluding the distant re-  
lative. This in the instance of set-  
tlements already *existing*; as to future  
ones, there will be still less difficulty  
about confining *their* operation with-  
in the range meant to be allowed  
them by the spirit of the proposed  
law.

Regard to the principles of the  
constitution, not less than to the pro-  
bability of carrying the measure  
through the Upper House, would at  
the same time incline me to exempt  
the Peerage from its operation, where-  
ever the effect would be, to deprive  
the title of any property which, un-  
der



der the existing law, would go to the support of it.

As to the latitude to be left to the power of *bequest*, I should propose it to be continued in respect of the *half* of whatever property would be at present subject to that power: the wills of persons in whose succession no interest is hereby given to the public, to be observed in all points as at present; as, likewise, those in whose succession an interest *is* given to the public, saving as to the amount of that interest: the plan consequently not trenching in any degree upon the rights of parents.\*

To

\* Many writers (Blackstone for one) have treated the right of bequest with very little ceremony: many writers, without having in view any such public benefit as is here in question, have been for abolishing it altogether:

[the



To give the plan its due effect, it will be seen to be indispensably necessary,

[the author of the Code Frederic, for instance; Cocceiji, chancellor to the late King of Prussia: see the Preface to that work.] Without entering into a discussion which is not to the present purpose, it will be sufficient here to observe, that not only the regard due to old established privileges and long-existing usages, but the success of the very system here proposed, though established in so great a degree at the expense of the power in question, may depend upon the leaving that power in possession of a very considerable degree of force. If a man were allowed no power at all over what property he left behind him, he would, in many instances, either be indifferent about getting it, or spend it as fast as he got it, or transfer it to some happier clime, where the interests of the community were better understood, and the feelings of individuals treated with more respect; and, in fact, a great part of the value of all property would thus be destroyed.

So



cessary, in the first place, that the whole property, in which the public shall thus have acquired an interest, shall, whatever it consists of, be converted into *ready money*: property in the funds alone excepted, from which the public cannot reap so great a

So much as to the abolishing the power altogether: as to the narrowing it in the manner here proposed, should that be objected to as too great a hardship, let it be considered that the defalcation thereby proposed to be made from the powers of proprietors in general, falls short, by much more than half, of the quantum of restriction imposed, by the terms of marriage settlements, on the description of proprietors whose lot in point of property is most envied, the great body of the nobility and landed gentry. In this plan, there is nothing to preclude a man from *charging* his estate—from *changing the nature* of it as often as he pleases—from *improving* any part by selling or charging another—or from *giving* or *spending* it in his life-time.



benefit in any other way, as by the sinking of so much of its debt in the first instance: in the next place, that, to prevent collusive undervaluation, and the suspicion of it, the conversion shall, in every instance, be performed in the way of *public auction*. As to the reasons for such conversion, they are tolerably apparent on the face of the proposition; and they will be detailed in their proper place.

What will also be seen to be necessary is, that, wherever the public has any interest at all in any succession under the proposed law, the officer of the public, that is, the officer of the Crown, shall enter into the possession and management of the whole in the first instance, in the same manner as assignees of bankrupts do in respect of the whole property,



perty, *real* and *personal*, together, or administrators or executors do in respect of the personality: not to mention the *real* in some cases, as where, by a clause in the will, it is ordered to be sold.

Of the several extensions above proposed, it may be observed, that, though they operate, all of them, to the augmentation of the produce, and, in so far at least to the *utility* of the measure, yet are they not, any of them, so indispensably *necessary* to its adoption, but that they may be struck out or modified, or even added to, by farther extensions, and the principle of the plan still adopted—the essence of it still preserved.

It may be a satisfaction to see, at this early stage of the inquiry, the principles by which the *extent* that may with propriety be given to this



resource, appears to be marked out and limited. The propositions I would propose in that view are as follows :

I. Whatever power an individual is, according to the received notions of *propriety*, understood to possess in this behalf, with respect to the disposal of his fortune in the way of *bequest*—in other words, whatever degree of power he may exercise, without being thought to have dealt *hardly* by those on whom what he disposes of would otherwise have devolved—that same degree of power the law may, for the benefit of the public, exercise once for all, without being conceived to have dealt *hardly* by any body, without being conceived to have *hurt* any body, and, consequently, without scruple : and even though the money so raised would *not* other-



otherwise have been to be raised in the way of taxes.\*

## II. Any

\* If without provocation on the part of my *children*, I were to let in strangers or mere collateral relations for an equal share of my fortune, my children would feel themselves injured, other people would look upon them as injured, my behaviour to them would be universally regarded as cruel and unnatural. A man is considered, indeed, as having his own fortune pretty much in his power, as against one child in comparison of another, but very little so as against his children taken together in comparison with collaterals or strangers. How stands it with regard to *nephews* and *nieces*? Is he considered as lying under the same restraint with regard to *them*? No, nor any thing like it. If it be his pleasure to give them all, so he may, they being his nearest relations, and without being thought to do amiss by any body else: but should it on the other hand be his pleasure to prefer to them a set of individual friends, or a public institution, say with respect to half, yet, so as he does but leave them the other half, they will scarcely be looked upon



II. Any further power which could be exercised in this way to the profit of the public purse, and of which the exercise, though not altogether clear of the imputation of producing a sense of hardship, would at the same time be productive of *less* hardship than the lightest tax that could be substituted in the room of it, ought, if the public mind can be sufficiently reconciled to it, to be exercised in preference to the establishment of any tax.

upon as ill used. Had he, indeed, exercised no such power at all over his property, had he suffered the law in this behalf to take its own course, they would, it is true, have got the whole. But why?—only because somebody must have it, and as they stand nearest, there is nobody else to take it. I say nothing here of brothers and sisters, fathers and mothers, uncles and aunts, grandfathers and grandmothers; they would lead me too far into details.

III. A



III. A power thus exercised in favour of the public purse, would go beyond the latitude given by the first rule, and would accordingly be productive of a sense of hardship, in as far as it went the length of producing in any degree any of the following effects, viz.

1. If it extended to the prejudice of the joint possession customarily enjoyed by a man's *natural* and necessary *dependents*, such as *children*, and those who stand in the place of children.

2. If it went to the bereaving a man of the faculty of continuing after his death any support he had been in the habit of affording to *relatives* of any other description, whose claims to, and dependence on such support, are, by reason of the nearness of the relationship, too strongly rooted in



nature and opinion, to be capable of being dissolved by the dispensations of law.

3. If, by putting it out of the power of a relation of parental age to receive, at the death of a relation of inferior age, an adequate indemnification for requisite assistance given in the way of *nurture*, it threatened, by lessening the inducements, to lessen the prevalence of so useful a branch of natural benevolence.

4. If it went to the bereaving a man of the faculty of affording an adequate *reward for meritorious service*, of whatsoever nature, and by whomsoever rendered, lessening thereby the general disposition among men to the rendering of such service.

5. The effect of such an extension of the proposed power would be purely mischievous, if what were gained thereby



thereby on one hand by the augmentation of the share taken into the hands of government, at the expense of the power of bequest, were to be lost on the other hand by a proportionable diminution effected in the whole mass of property in the country, in consequence of the diminution of the inducements to accumulate, and lay up property, instead of spending it.

6. The public mind must in this instance, as in every other, be at any rate treated with due deference. In this instance, as in every other, a law, however good in itself, however good on the supposition of acquiescence, may become bad in any degree by unpopularity; by running too suddenly and directly against opinions and affections that have got possession of mankind.

D

Thus



Thus much for the rules that may serve for our guidance, in adjusting the extent that may be given to this resource. They may be trusted, it should seem, for the present at least, to the strength of their own self-evidence. The application of them to practice, the application of them to the several modes and degrees of relationship, and to the several situations and exigencies of families, is matter of detail, that will meet us in its proper place.



## § 2. ORDER OF THE DETAILS.

IN continuing the thread of this proposal, the following is the course propose to take—

1. To give a brief view of the *advantages* or beneficial properties that appear to recommend the measure to the adoption of government—

2. To shew how *distinct* it is in reality from all taxes on *collateral successions*, which have ever been established or proposed, and how much the distinction is to its advantage—

3. To exhibit the best idea I am capable of giving, of the probable amount of the *produce* that may be expected from it—



4. I shall add a few observations, relative to the most eligible *application* to be made of that produce.

Descending further into detail,\*

5. I shall give a more particular view of such *regulations* as may seem proper to be inserted for the purpose of applying to practice the principles already exhibited.

6. I shall attempt a sketch of an *official establishment* for the *collection* of the produce.

7. I shall consider the measure with reference to the cases where the

\* The matter belonging to the ensuing heads is not all of it included in the present publication. No part of it was sent, the demand for it depending upon the approval or disapproval of the principle of the measure; nor has it ever been thought worth while to work up into form any more than is here subjoined. Note added in Dec. 1795.

in-



interests of individuals belonging to nations altogether *foreign*, or nations *co-ordinate* with or *subordinate* to the British, are concerned.

8. I shall consider it with reference to the cases where the *property* in question happens to be *situated* any where *without* the limits of the laws of Great Britain.

9. I shall attempt a general sketch of a *plan* for the *collection* of the produce: in the course of which attempt I shall have occasion to advert to the differences that may be suggested by the *nature* of the *property* which may come to be collected: to the means of guarding against *concealments*, and other *frauds*, to which the property in its several shapes may be exposed, on the part of such individuals whose interest or affections may be at variance, in this behalf, with the interest



terest of the public; as also against any such *abuses of power* and other *mismanagements*, as the servants employed on behalf of the public in this business, stand exposed, by their respective situations, to the temptation of being chargeable with.

In a sort of Appendix, which those who may find themselves already satisfied with the principle of the mode of supply, may spare themselves the trouble of looking into,

10. I shall defend the proposed institution against every *objection*, which my imagination can represent to me, as capable of presenting itself.\*

\* Heads of objections, with answers, were sent, in form of a table, and being now printed *verbatim*, form the matter of one of the ensuing sections.—Note added Dec. 1795.



§ 2. *Order of the Details.* 23

11. I shall shew that a latitude, much beyond what is here proposed to be assumed, stands warranted by the *opinions* of the most respected writers.

12. That it is equally warranted by *precedent*, that is, by the disposition of law in this country from the primitive ages of the constitution down to the present times.

13. Lastly, in the way of supplement to the refutation of the several imaginable objections to the proposed measure, I shall endeavour to give a comprehensive idea of the several *effects*, as well immediate as remote, that appear any way likely to result from it, considered in every imaginable point of view.



## § 3. ADVANTAGES.

**T**HE advantageous properties of the proposed resource may be stated under the following heads, viz.

1. Its unburthenfomeness—
2. Its tendency to cut off a great source of litigation—
3. Its favourableness to marriage—
4. Its probable popularity on that score.

Its *unburthenfomeness*, which is the grand and transcendent advantage, is not matter of surmise: it is testified by experience: it is confirmed, as we shall see, by the most indisputable principles of human nature: by the



fundamental constitution of the human feelings.

I. It is testified by *experience*. On the decease of my uncle, who had children before I was born, the law gives every thing to his children, nothing to me.—What do I suffer from finding myself thus debarred? Just nothing:—no more than at the thoughts of not succeeding to the stranger whose hearse is passing by.

What more should I suffer, if my uncle's property, instead of going to his children, were known before hand to go the public? In point of personal feeling at least, nothing: sympathy for my cousins, in the case of their being left destitute, is a different concern.

Living under the law of England, I find myself debarred from a succession, in which I should have shared,

E

had



had I lived under the Law of Spain. What do I suffer at hearing this?—Just nothing: no more than I suffer at the thoughts of not being King of Spain. But if the law of England were to be changed in this behalf in conformity to the measure proposed, what is now the existing law would to me be no more than the law of Spain.

My father gets an office: upon his decease, the office goes to the nominee of the King from whom he got it, not to me. Do I regard the successor as an intruder?—Do I feel his taking possession of the office as a hardship upon me?—No more than I do his Majesty's having succeeded to the crown instead of me.

Under the *existing* Law of Escheat, real property, on the absolute failure of all heirs, lapses to the crown  
I already.



already. Is there any thing of hardship felt by *any* body?—If there were, it would be a cruel hardship, for it would be felt by *every* body.\* Give to this branch of the law the extent proposed, confining it always within the bounds above traced out, and it will be even then as unburthenfome as it is now.

Thus stands the resource in point of unburthenfomeness as demonstrated by experience: What does so singu-

\* I leave out of the supposition, the case where there is a father left, a grandfather, or a relation of the half blood, and the estate escheats to their prejudice. These are but too real hardships; but they belong to the law in its present state, were ingrafted into it by accident, and would not continue in it in its proposed extended state, if the choice depended upon me. Thus much must be acknowledged: the removal of them is a separate question, bearing no necessary relation to the present measure.



lar a property turn upon? —Upon a most simple and indisputable principle in human nature: the feeling of *expectation*. In the case of acquiring or not acquiring, of retaining or not retaining, no hardship without previous expectation. *Disappointment* is expectation thwarted: in the distribution of property no sense of hardship but in proportion to disappointment. But expectation, as far as the law can be kept present to men's minds, follows with undeviating obsequiousness the finger of the law. Why should I suffer (bodily distress from want out of the question) why should I suffer, if the property I call *mine*, and have been used to regard as mine, were to be taken from me? —For this reason and no other—because I *expected* it to continue with me. If the law had predetermined, the  
the



the property I am now using as mine, should, at the arrival of the present period cease to be mine, and this determination of the law had been known to me before I began to treat it as mine, I should no longer have *expected* to be permitted to treat it as mine: the ceasing to possess it, the ceasing to treat it as mine, would be no *disappointment*, no hardship, no loss to me. Why is it, that I do not suffer at the reflection that my neighbour enjoys his own property and not I?—Because I never *expected* to call it mine. In a word:—In matters of property in general, and succession in particular, thus then stands the case: *hardship* depends upon *disappointment*; *disappointment* upon *expectation*; *expectation* upon the dispensations, meaning the *known* dispensations of the law.

The



The riddle begins to solve itself:—  
 a part taken, and a sense of burthen  
 left; the whole taken and no such  
 effect produced:—the effect of a part  
 greater than the effect of the whole:  
 the old Greek paradox verified, a  
 part greater than the whole.\*—Suffer  
 a mass of property in which a man  
 has an interest to *get into his hands*,  
 his expectation, his imagination, his  
 attention at least, fastens upon the  
 whole. Take from him afterwards a  
 part, let it be such a part and no  
 other, as at the time of his beginning  
 to know that the whole was to come  
 into his hands, he knew that he  
 would have to quit, still, when the  
 time comes for giving it up, the part-  
 ing with it cannot but excite some-  
 thing of the sensation of a *loss*: a

\* ——— πλεον ημισυ παντος.



sensation, which will of course be more or less pungent, according to the tenacity of the individual.—*Ah! why was not this mine too!—Ah why must I part with it! Is there no possible means of keeping it? Well, I will keep it as long as I can, however: and perhaps the chapter of accidents may serve me.*—Take from him, now, (I should say, not *take*) but *keep* from him the whole, so keeping it from him that there shall never have been a time when he expected to receive it, all hardship, all suffering, is out of the case; if he *were* a sufferer, he would be a sufferer indeed; he would be a sufferer for every atom of property in the world possessed by any body else; he would be as miserable as the world is wide.\*

Under

\* *Better to have nothing than to have a share?*  
(says an objector) *How can that be?—Is not the*  
*man*



Under a tax on successions, a man is led in the first place to look upon the whole in a general view as his own: he is then called upon to give up a part. His share amounts to so

*man himself the best judge?—Ask him then, which is best for him, share or no share? My answer is—the question does not meet the case. You suppose his attention previously drawn to the subject; you have raised his expectation; you have given him his option between some and none: that being the case, his answer, it is true, cannot but be as you suppose.—Not to come in for any thing would now be a disappointment: It will even be a disappointment, should the share he gets, prove smaller than what he hoped to get: and the disappointment will be not less but greater, if he gets no share at all. True; but all this depends upon the option: accordingly, in the case you suppose, there is an option given; whereas, in the case I suppose, there is none. When an estate in England has been limited away from a man altogether, he never looks at it: what should lead him?—he has no more option in it than in the kingdom of Spain.*

*much*



much : this share he is to *have* ; only out of it, he is to *pay* so much *per cent.* His imagination thus begins with embracing the *whole* : his expectation fastens upon the whole : then comes the law putting in for its *part*, and forcing him to quit his hold. This he cannot do without pain : if he could, no tax at all, not even a tax on property, would be a burthen : neither land-tax nor poor's rate could be too high.\*

The utility of that part of the proposal which gives to the public officer possession of the whole, whether the

\* Try the experiment upon a hungry child : give him a small cake, telling him after he has got it, or even before, that he is to give back part of it. Another time give him a whole cake, equal to what was left to him of the other and no more, and let him enjoy it undiminished—will there be a doubt which cake afforded him the purest pleasure ?



public in conclusion is admitted to the whole, or only to a part, may now be seen in full force. It is a provision not more of *prudence* with a view to the public, than of *tenderness* with a view to the individual. Had he been suffered to *lay his hands* upon the *whole*, being afterwards, or even at the time, called upon to *give up a part*, his attention would unavoidably have grasped the whole, the giving up the part would have produced a sensation, fainter perhaps, but similar to that produced by an unexpected *loss* : on the other hand, as according to the proposal, he *takes* nothing that he does not *keep*, no such unpleasant sensation is produced.

The case, where the individual sees a share go from him, for the benefit of the public, in the way of *partition*, stands in this respect, between the  
case



case where the public is let into the whole, and that where a part is taken from him in the way of a *tax*. Whether on this plan of partition, the individual shall feel in any degree the sensation of a loss, will depend partly upon the *mode of carving out* the share, partly upon the *proportion* taken by the law, partly after all upon the temper and disposition of the individual. As to the *mode of carving*, the whole secret lies in taking the public officer, and not the individual, for the *carver*, for the reasons that have been seen. As to the *proportion*, to come back to the paradox, the larger the share of the public, the better; even with reference to his feelings: for the larger it is, the more plainly it will shew as a *civil* regulation in matters of succession: the smaller, the more palpably it will have the air of a *fiscal*

F 2          imposition,



imposition, the more it will feel in short like a *tax*. The more is taken under the name of a tax, the more burthenfome the measure, as every body knows: at the same time the more is taken for the public under the name of *partition*, so long as an equal, or not much more than equal, share is left to the individual, the farther the measure from being burthenfome: because the farther from being considered as a tax. The Roman Tax of 5 *per cent.* on collateral successions was considered as a heavy burthen: a tax of 50 *per cent.* imposed under the name of a tax would have been intolerable. At the same time, pass instead of the tax a law of inheritance, giving the public 50 *per cent.* upon certain successions, the burthen may be next to nothing: pass a law of inheritance giving the public



public the whole, the burthen vanishes altogether. The dominion of the imagination upon the feelings is unbounded: the influence of names upon the imagination is well known. Things are submitted to without observation under one name, that would drive men mad under another. Justice is denied to the great bulk of the people by law taxes, and the blind multitude suffer without a murmur: were the distribution of justice to be prohibited in name, under a penalty to the amount of a tenth part of the tax, Parliament would be blown into the air, or thrown into a mad-house.

Would it be better then, upon the whole, for the public to take *all*, and let no relation in for a share?—Certainly not in every case. The law is powerful here: but even *here* the law is not absolutely omnipotent. It can govern



govern *expectation* absolutely ; meaning always in as far as it makes itself present to the mind : it can govern *expectation* absolutely ; but governing *expectation* is not every thing. It may prevent me from being *disappointed* at not having bread to eat : but if, by preventing my having bread to eat, it starves me, it will not prevent me from suffering by being starved. It can save me in this way from *ideal hardship*, but not from *corporal* sufferance. It can save me from disappointment at not *beginning* to enjoy : but it cannot save me from disappointment at not *continuing* to enjoy, after the habit of enjoyment has grown upon me. Hence the necessity of consulting the rules of precautionary tendernefs that have been exhibited above.

Unburthen-



Unburthenfomeness is a praise that belongs to this mode of supply in another point of view:—with reference to the business of *collection*. In many instances so great is the incidental burthen accruing from this source, as almost to rival in real magnitude, and even eclipse in apparent magnitude, the principal burthen which is the more immediate fruit of the fiscal measure. This is more eminently the case in the instances of the *customs* and the *excise*: of those branches of taxation by which by far the largest portion of the revenue is supplied. The officer of excise goes no where where he is not a guest; and of all guests the most unwelcome. The escheator will have no where to go where he is not *at home*: into no habitation, into no edifice, not so much as upon a foot  
of



of land, which is not to this purpose, which is not as against all *individuals*, his *own*. No jealousies; no collision of rights; no partial occupations, extorted at the expense of the comfort and independence of proprietors. The excise is not only the most productive branch of the revenue, but the most capable of extension, and therefore the most liable to be extended. It can surely be no small merit in the proposed supply, in addition to its other merits, that in proportion as it extends, in the same proportion it puts a stop to extensions of the excise.

II. The advantages that follow are of minor importance.

The advantage of *checking litigation* in this way, by the diminution of its aliment, is however not to be despised. The fishing in the troubled waters  
of



of litigation, for the whole or a part of the property of a distant relation or supposed relation, is one of the most alluring, and at the same time most dangerous, pursuits, by which adventurers are enticed into the lottery of the law. It is like the search after a gold mine, a search by which the property of the adventurer is too often sunk before the precious ore is raised. Causes of this nature are by no means unfrequent in Westminster Hall; the famous *Selby* cause was a bequest, nominally to relations, really to the profession. This source of litigation would be effectually dried up by the measure here proposed.

An item, which may naturally enough be added to the account of advantage, is the favour shewn to marriage, and in particular to *prolific marriages*, the sort of marriages of

G

which



which the title to legislative favour stands in the most plausible point of view.

That the influence of the system in question would be favourable to marriage, and in particular to prolific marriage, will hardly be disputed. Of fathers and mothers of families it leaves the powers untouched; it places them, in comparison with single persons of both sexes, in a situation of privilege and pre-eminence. Within the threshold of him whose marriage has fulfilled the ends of marriage, the foot of the officer of the revenue has no place. His will is executed in all points; whatever he bequeaths, to whomsoever he bequeaths it, offspring, relation, or stranger, passes without deduction. Whatever restriction it imposes, is all at the expense of the celibatary and unmarried. If with  
pro-



propriety it could be stiled a *tax*, it would be a *tax on celibacy*.\*

An advantage of a less questionable nature, is the popularity which seems the natural effect of any measure wearing the complexion above-mentioned—for popularity, it must be confessed, popularity, how hollow soever be the ground it stands upon, can never be refused a place among

\* In my own estimation, the good that can be done by any encouragements of a *positive* nature given to marriage, shews itself, I must confess, in a very questionable point of view; but the reasons in support of this opinion not being to the present purpose, will be better spared than given. I say *positive*; for as to the negative kind of encouragement that, in the instance where any obstacles of a political nature can be shewn to subsist, may be afforded by the removal of those obstacles, the utility of this species of encouragement stands upon a footing altogether different.



the advantages of a measure. Satisfaction on the part of a people, satisfaction, so long as it subsists, is a real good—so long as it subsists, its title to that appellation is altogether independent of the source from which it flows. If, indeed, the utility of the measure be illusory, then, indeed, when the illusion is dispelled, there is an end of the advantage; but the advantage, so long as it continued, was not the less real. Happily, in the present instance, the advantage is not only *real* but *pure*. Though in the way of affording encouragement to marriage, the proposed measure should in truth be of little service, any farther than as it happened to be thought to be so, the pleasure of seeing it popular on this score may be indulged with the less reserve, as  
the



the delusion, if it be one, is not in this instance attended with any pernicious consequences.

## § 4. ORIGINALITY.

IF the proposal relative to this resource be not an *original* one, its want of originality may be seen to afford an objection. If not original it has been *proposed*: and if it has been proposed, it has been *rejected*: for assuredly it has not been adopted any where.

A *tax on successions* might, at first glance, present itself as bearing a resemblance to the resource in question; as being a sort of modification of it, a commencement towards it; as forming, in a manner, a branch of it. But we have already seen how per-



perfectly dissimilar, or rather opposite in effect, the *tax* is to the *regulation*, and how much the difference is to its disadvantage. A tax on successions lies as heavy on the individual, as it falls light into the Exchequer.

Taxes on successions, (not to mention the old Roman tax, the *viceffima hereditatum*, the 5 per cent. on collateral successions) exist already in this country; they exist in the form of a stamp duty, in some degree proportional, on probates and letters of administration; they exist in the form of a stamp duty on receipts for legacies and distributive shares. As to the duties on legacies, in what proportion they are *paid* I do not know; but I am sure they are *evaded*, and very frequently evaded. One should be almost sorry if they were *not* evaded; they are evaded in proportion as confidence



fidence prevails in families. The whole mass of property goes in the first place, into the hands of individuals; a course which, indeed, it could not but take, so long as the resource is left to stand upon the footing of a tax. The private executor sets out with getting every thing into his hands; the public gets what this most confidential friend of the deceased thinks proper to bestow; of course he will not bestow any thing at the expense of the friend of his testator, so long as he can persuade himself, with any tolerable assurance, that the person he is befriending will not requite his generosity with such a degree of baseness, as to make him pay the legacy over again out of his own pocket.

Another circumstance concurs in diminishing the productive power of  
a tax



a tax upon successions.—When the duty amounts to a sum which appears considerable, the levy being a tax, a tax to be levied on an individual, and levied all at once, it wears so formidable an aspect, that the man of finance himself is startled at it; he accordingly reduces the rate, and the higher the legacy mounts, the more he reduces it; so that all proportionality is destroyed. By this means, the better a man can afford to pay, the less it is he pays, and the tax has the appearance of a conspiracy of the richer against the poorer classes of mankind.—Whence comes this?—only from its being raised by a *tax*, and not by a *regulation*, as above proposed. Under the regulation the public will pay itself; the officer of the public will have the staff in his hands; a partiality as unfriendly

2



friendly to the interests of finance, as it is unseemly in the eyes of justice, will disappear, and wealthy successions will yield in proportion to their opulence.\*

\* The freshest and most considerable tax upon legacies and shares in successions (that of 29 Geo. III. chap. 51. ann. 1789) has freed itself so far from this objection; but the duties on probates and letters of administration remain exposed to it; as do the anterior taxes on legacies and shares in successions, imposed by 20 Geo. III. chap. 28. ann. 1780. The reason, in the instance of the duty on probates and letters of administration, seems to be, that in that stage the value of the subject can only be *guessed at*; whereas, in the other cases, it has been *liquidated*.



## § 5. PRODUCE.

*To Mr. —.*

INSTEAD of the matter destined for the present section, I must content myself, for the present, with sending you little more than a blank. —I could not have filled it up, without attempting to lead you into a labyrinth of calculations, which, after all, I could not render complete, for want of *data*, without your assistance, and which, if the *principle* of the measure should not be approved of, would have no claim to notice.

Meantime, as the result of the calculations need not wait for the calculations themselves, and as a supposition of this sort, however imperfectly



perfectly warranted, may be more satisfactory than a total void, I will beg your indulgence for the following *apperçu*.

Nett annual produce of this resource upwards of 2,000,000*l.* over and above the expense of collection.

EXPENCE OF COLLECTION.

|                                                                                                                     |           |
|---------------------------------------------------------------------------------------------------------------------|-----------|
| Escheators and sub-escheators, at 5 per cent. upon the above produce                                                | £.100,000 |
| Judicial establishment for the purpose, at $2\frac{1}{2}$ per cent. which, I apprehend, could not be dispensed with | 50,000    |
| Total, at $7\frac{1}{2}$ per cent.                                                                                  | - 150,000 |

It is natural I should be over sanguine; but I must confess, I should expect to find the above sum below the mark rather than above it. The calculations, in their present state, point at three millions; but then



there are deductions to be made on one hand, as well as additions on the other.\*

For my own part, if it depended upon me, I should be very much disposed to turn my back upon calculations: for if the *principle* of the resource be but approved of, 200,000l. a year would be as sufficient a warrant for it as 2,000,000l. since, whether much or little, it would be all so much clear gain, unfelt by any body in the shape of a loss.

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\* The documents resorted to as *data* for calculation, were the instances of *collateral* succession in different degrees, compared with those of *lineal* succession, as indicated by the publications on the peerage. The *data* thus obtained were digested into tables, including Scotch and Irish as well as English and British, existing as well as extinct. Note added Dec. 9, 1795.



The calculations however, such as they are, can be submitted at any time upon a day or two's notice. They will, at any rate, afford a view of the *data* the subject affords, of the difficulties to be overcome, and of the uncertainties which are not capable of being cleared up without the aid of Parliament.

## § 6. APPLICATION.

A WORD or two may not be amiss, respecting the application of the produce. In general, this topic may seem foreign enough from the consideration of the supply itself; but that, as we shall see, is not altogether the case here.

In



In time of full peace, the floating debt provided for, there are but two options with regard to the application of a new supply, reduction of debt, and extinction of taxes; for current service is already provided for by existing funds.

In time of war there are two additional options; pledging for interest of loans, and application to current service.

I will begin with the case of war; for though the measure would be equally fit for establishment at either season, yet war is certainly that which holds out to it the most promising chance for being actually established. *Necessity*, the mother of *invention*, may then be the mother of *adoption* too, which, of the two, is by much the hardest offspring to bring forth.

I should



I should not wish, nor even expect, to see the produce of this resource appropriated to current service; I should not wish, nor even expect, to see it among the mass of pledges given as security for a loan. The novelty of its completion, the uncertainty of its amount, both seem to preclude it from either destination: it may be prodigious; it may be nothing: there is no saying what it may be *taken* for. Resources more according to the usual model, and, therefore, regarded as more certain, *taxes*, in a word, would be the supplies, naturally destined to such service.

There remain *discharge* of debt and *extinction of taxes*. Between these two employments, I would wish to see it divided, and, perhaps, pretty equally divided.



There is one portion that could not well be refused to the discharge of public debt; even in war time; even under the pressure of any exigency: I mean the portion which exists already in that shape; where the property consists of a debt due from Government to be discharged by an annuity till paid off: in a word, property in Government annuities, or (as it is commonly termed, to the great confusion of ideas) *money in the funds*. The extinction of so much of the debt is here so natural a result, that it may be set down as an unavoidable one:—to keep the debt alive, and sell it for the benefit of Government; just as (if it had fallen into individual hands, it might have been sold for the benefit of individual

divi-



dividuals) will surely not be thought of.\*

*Remit taxes? and that in war time? —that would be an extraordinary employment for it indeed!—Extraordinary indeed: but not on that account the less eligible: Novel blessings shine but the brighter for being new.*

An opportunity would by this incident be presented, and, perhaps, this is the only incident by which such an opportunity could be presented, of shaking off the yoke of some of the most oppressive taxes. The whole list would then be to be over-hauled, and the worst chosen picked out and expunged. †

Those

\* This part, as far as the calculation above given is to be depended upon, may be reckoned at about                      th of the year's produce; at about                      l.

† *Fresh* taxes have, in many instances, been  
I                      re-



Those which to my conception would stand at the head of the list, are, as I have said already, the taxes upon justice. In relation to these, I can speak with confidence, having sifted them to the bottom, and demonstrated them, or I know not what demonstration is, to be the worst of all taxes, actual or possible.

Further from the precise limits of

repealed, upon fresh experience of their ineligibility or unpopularity: examples of the repeal of an *old-established* tax are rare, indeed. That of the *tax on coals borne coastwise* is an instance as honourable to those with whom the repeal originated as it is rare. As to the taxes not *taken off*, but *reduced*, on the institution of the Commutation Tax, the reduction was made, not because they were *ill-chosen*, for they were nothing less than ill-chosen, but because they had been strained so high as to become *unproductive*: it was made not for *relief*, but for *revenue*.

the



the subject I will not attempt to stray ; unless it be for a fantastic moment in the way of reverie. Pure as we have found the resource to be from *hardship*, and in all human probability from *odium*, how pregnant, may we *imagine* it at least to be, of *relief*! No law taxes :—no prohibition of justice. No tax on medical drugs :—no prohibition of relief from sickness, and from death. No window tax :—no prohibition of air, light, health and cheerfulness. No soap tax :—no prohibition of cleanliness. No salt tax :—no prohibition of the only sustenance of a famished people.\* Make the most of this resource, and, if not all these reliefs, at least the most essential of them, might perhaps be afforded, even under the pressure of the war.

\* Fish to the Highlanders of Scotland.



To do all this, and government never the poorer ! To do all this, and have a rich surplus for the sinking fund !— What a feast for humanity ! What a harvest of popularity ! What a rich reward for wisdom and virtue in a minister !

It is scarce necessary to observe, that neither in any of *those* ways, nor in any other, should specific relief be engaged for, till the means of relief are actually in hand. The produce should be taken for nothing, till it is actually in the Exchequer. When a year of probation is elapsed, the amount will, for any reason that can be alledged to the contrary, be as uniform as that of the steadiest tax.



§ 7. HEADS OF OBJECTION,

WITH

ANSWERS.\*

OBJECTION I.

*SUPPOSED tendency to promote dissipation of the national wealth, by leading men to live upon their capitals, or sell them for annuities for their own lives, in consequence of their being restrained from benefiting those that are dear to them after their death.*

\* To Mr. ———. This is but an Index. The Objections and Answers are given at large in the body of the paper.

AN-



## ANSWER.

No such tendency—for

1. A man *will not* bar those that are *dear* to him, from receiving *any* part, only because there is *some* part that he *can not* enable them to receive.

2.—Nor *himself*, from disposing in that manner of *any* part, only because there is *some* part that he *can not* so dispose of.

3. The power of benefiting others after death, is not the sole motive to accumulation: another, and a still stronger and more universal one, is the faculty of increasing a man's fund of personal enjoyment during life: a faculty which would be at a stand, if he parted with his capital for an annuity.

4. Such



4. Such dissipation, were it really to be, in here and there an instance, the result of the measure would only be a *diminution*, and that a most trifling one, from the *benefit* of it, not any *objection* to the *principle* of it.

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OBJECTION II.

*BREACH of faith, in the instance of property in the funds.*

ANSWER.

Not unless *confined* to that species of property, which is not proposed—

No more than the *existing* taxes on *distributive shares* and *legacies*: which, in as far as there is nothing else to pay them, must come out of any property a man had in the funds—



No more than any tax on consumption ; which must fall upon *stockholders* in common with other people ; since, in as far as a man's own income arises out of the funds, every tax he pays, is paid out of what he has in the funds.

Property is not in this way the *more* affected for being in the funds ; since in any other shape, it would be equally reached by the proposed regulation.

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OBJECTION III.

*BREACH of faith, in the instance of foreign stockholders resident abroad, who would not have been affected by the taxes in lieu of which this would come.*

AN-



ANSWER.

NONE: for they may sell out.

REPLY.

The sort of obligation they will thereby be laid under to sell out, is still a hardship: the more, as their submitting to it will lower the price—

ANSWER.

YES; were many likely to sell out on this account, but that is not the case—

1. Because much of such stock is in the hands of *bodies corporate*—

2.—Among individuals, it is but a small proportion that will be destitute of relations *within the pale*.

3.—Fewer still, who would take to heart to such a degree a restriction

K

from



from which a man's near relations stand exempted.

4. Feeling it to be in his power to sell out at *any* time, a man would neither sell out at *first*, nor *afterwards*.

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OBJECTION IV.

*IT* is pro tanto very much exposed at least to evasion.

ANSWER.

1. To none but what may be pretty effectually guarded against by proper registers, &c.

2. If it could not, the objection applies—not to the principle of the measure, but only to the quantum of advantage.

3. It



3. It removes *pro tanto* the objection of *breach of faith*; so far as a man *evades*, so far he is not *hurt*.

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OBJECTION V.

*TENDENCY to sink the price of land, by glutting the market with it.*

ANSWER.

I. No reason for supposing it will tend to *sink* the price in one way, more than it will to *raise* it in another—For

1. Income arising out of *land*, being more generally eligible, will always fetch more than equal income arising out of the *funds*: still more, than income depending upon mere *personal security*—



2. Nothing therefore can sink the price of land, without sinking that and the price of stocks together; nor without sinking the price of stocks more than the price of land: nor raise the price of stocks, without raising the price of land.

3. It will tend to *raise* the price of stocks at any rate, as to that part of the property it attaches upon, which it finds *already* in the shape of stock, and which it will of course extinguish and take out of the market.—As also in respect of whatever other part is applied to the extinction of the public debt.

Admitted, that a depreciation in the price of property in land, in comparison of that of property in the funds, might take place, if land were as yet at a monopoly price, as Adam Smith seems to think it is. B. 3. C. 4



§ 7. *Heads of Objection, &c.* 69

But this does not seem to be the case; since a man can make three *per cent.* by laying out his money in land, when he can make but three and a half *per cent.* by laying it out in the funds; which is no more than an adequate difference, for the difference, in point of general eligibility, between the two sources of income.

II. A fall in the price of land is considered not as an ineligible, but as an eligible event, by Adam Smith [B. 3, C. 4] though not by me, who referring every thing to the feelings of individuals, regard the sensation of loss thus produced, as an evil outweighing every possible advantage.



## OBJECTION VI.

*MONEY*, thus obtained, will be COLLECTED at greater EXPENSE than if obtained from taxes.

## ANSWER.

1. No particular reason for thinking so—

2. Were this clear, it would afford no objection; because none of the *hardship* would be produced here, which is the result of expense when defrayed by taxes.

## OBJECTION VII.

*INCREASE* of the INFLUENCE of the CROWN, by the new places that would be necessary.

AN-



ANSWER.

1. Not more from *this* mode of supply, than from any other of equal magnitude.

2. Were the objection any thing determinate, the weight of it would bear—not against a *useful* establishment like this, but against *useless* or *less useful* places.

3. The objection, if it were worth while, might be got rid of in part by giving the appointment of *Escheators* to the *Freeholders*, who now have the appointment of *Coroners*.

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OBJECTION VIII.

*THE* POWERS *that must be given for the purpose of* COLLECTION, *would be* ABUSED.

AN-



## ANSWER.

1. This mode of supply is not more open to abuse of power, to the *prejudice* of the individual, than any other.

2. Abuse of power by undue *indulgence* to the individual, to the *prejudice* of the revenue, goes only to the *quantum* of the advantage, and forms therefore no objection to the *principle* of the measure: and as to the individual, so far as he is *indulged*, duly or unduly, he is not *hurt*.

3. Abuses of both kinds may be more effectually checked in this instance than in others, viz. by the publicity that, even for other purposes, would require to be given to the proceedings.

The



The remark, though bad as an *objection*, is good as a *warning*, and as such would be attended to.

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OBJECTION IX.

*BY the facility it would give to the business of supply, it would be an encouragement to PROFUSION on the part of government.*

ANSWER.

If this were an objection, the most burthenfome mode of supply would be the best—

Rendering supply more burthenfome than it might be, is a remedy worfe than the disease; or rather an aggravation of the disease, to the exclusion of the remedy.

L The



The following are the suppositions which the objection must take for granted—1. that all expenditure is unnecessary; 2. that this mode of supply would be submitted to; 3. that no other would.

It would be a strange inconsistency, if those who could not be brought to adopt other modes of checking profusion, could, in the mere view of checking profusion, be brought to reject this mode of supply.

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**OBJECTION X.**

*IT would make a REVOLUTION in property.—*

**ANSWER.**

The tendency of this objection, the force of which consists altogether in the

the



the abuse of a word, is to point to a wrong object the just horror conceived against the *French* Revolution. The characteristic of *that* revolution is to trample in every possible way upon the feelings of individuals. The characteristic of *this* measure, is to shew more tenderness to those feelings, than *can* be shewn by the taxes to which it is proposed to substitute it.

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OBJECTION XI.

*THE* property of the nation would thus be SWALLOWED up in the Exchequer—

ANSWER.

No more than by taxes to the same amount.



## OBJECTION XII.

*IT* would be a SUBVERSION of the ancient law of inheritance in this country—

## ANSWER.

A quiet alteration, made by a mere extension given to the *old* law, to a branch more ancient than almost any of those at the expense of which it is extended. No *subversion*, except in as far as every *amendment* is a *subversion*.

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 OBJECTION XIII.

*IT* would be an INNOVATION.

## ANSWER.

No more than every *new* law; nor, as we have seen, so much as most new laws



laws—No more than a set of taxes to the same amount—

Not so much—for all the revenue laws we have, are *innovations* in comparison of the law of *Escheat*.

§ 8. EXISTING LAW.

CAN any thing of *harshness* be imputed to the proposed measure? Not when viewed by itself, we have seen already. View it, then, in comparison; turn to existing law. No exclusion of the father *here* as *there*, on pretence of the *ponderosity* of inheritances: no exclusion of the half-blood, as if the son of my father or my mother were a stranger to me:  
no



no exclusion of all children but the first-born; as if the first-born only lived upon food, and all others upon air: no exclusion of the better half of the species, as if the tender sex had no need of sustenance. The feelings of individuals, sole elements of public happiness, these, and these only, are the considerations that have *here* been exclusively consulted, and their suggestions undeviatingly adhered to; human feelings, the only true standards of right and wrong in the business of legislation, not lawyers quibbles, nor reasons of other times, that have vanished with the times.

Pursue the comparison yet farther; on the one hand no harshness at all, as we have seen; on the other, a harshness which is incurable. The proposed law, taking nature for its guide,



guide, leads expectation by a filken string. The existing law, pursuing the ghosts of departed reasons, thwarts expectation at every step, and can never cease to do so. It does so, because it is in the *speechless* shape of *common* law; and it would do so still, even though *words* were given to it, and it were converted into statute law. Reasons rooted in utility, are so many anchors by which a law fastens itself into the memory; lawyers quibbles are a rope of sand, which neither has tenacity of its own, nor can give stability to any thing else. Rules and quibbles together, the impression they make upon the mind, is that of the wind upon the waves; and when incidents spring up to call them into action, the sensation produced is the sensation of a thunderstroke.



## § 9. ANTIENT LAW.

SHALL we dig into antiquity?—  
The result will be still more favourable. Reckoning from the subversion of the Roman empire, property, considered as surviving to the proprietor, is comparatively of modern date. Under the feudal system, in the morning of its days, estates greater than life-estates were unknown: the most fixed of all possessions fell back into the common stock upon the death of the possessor; and before the reign of the Conqueror was at an end, the feudal tree, transplanted from the continent into this our island, had covered almost the whole surface of the kingdom with its gloomy shade.



shade. This venerable system had, indeed, before that period, lost a good deal of its vigour, which is the same thing as to say its rigour, and the principle of succession had taken root under it, but not without being loaded with conditions, and weakened by defalcations and distortions, over and above those which have been already glanced at, and which we are plagued with to this day. The relaxation too was an innovation, which, in the vocabulary of antiquarian idolatry, as well as of indiscriminating timidity, means a corruption, of the primæval state of things.

At a much later period, moveable property took, if not exactly the same course with immoveable, a course more opposite to that indicated by utility, and equally repugnant to that which seems prescribed by nature.



The more substantial part, the immoveable, had been reserved for the maw of feudal anarchy: the lighter part, the moveable, was carried off by some holy personage for *pious uses*; and of all uses the most pious was his own. Moveable and immoveable together, power without mercy, or imposture without shame, took the whole under their charge; the claims of the widow and the orphan were as little regarded as those of the most distant relative. So late even as the latter part of the reign of Edw. III.\* it required an exertion of parliamentary power, to make the man of God disgorge, in favour of the fatherless and the widow.†

The

\* 31 Edw. III. p. 1. ch. 11. 9 co. 40. in Burn's Eccl. Law, iv. 197.

† Hume has fallen into a mistake on this subject



The right of bequest, the right of governing property by one who is no longer in existence to enjoy it, is an innovation still more modern. In its relation to moveables, it was conquered from the spiritual power by gradual and undefinable encroachments: the validity of its exercise hav-

subject, in supposing, that in the reign of Henry II. moveables were the prey not of the spiritual power but the temporal. "It appears," (says he, vol. i. ann. 1100) "from Glanville, "the famous justiciary of Henry II. that in "his time, where any man died intestate, an "accident which must have been frequent "when the art of writing was so little known, "the king, or the lord of the fief, pretended "to seise all the moveables, and to exclude "every heir, even the children of the deceased; "a sure mark of a tyrannical and arbitrary "government." So far Hume, referring to Glanville, l. vi. c. 16. But what Hume understands of intestates in general, Glanville confines to bastards.



ing, from the conquest to the present time, depended on the decision of that same power, which, till the above-mentioned statute of Edw. III. was interested in denying it: and, after the right was secured, the facility of its exercise must, for a long time, have been confined within narrow bounds, by the scarcity of literary acquirements. In its relation to immoveables, it was not placed on solid ground, till the statute of Henry VIII. and then only by implication: nor (to take the matter in the words of Blackstone) was it “till even after the  
“restoration, that the power of de-  
“vising real property became so uni-  
“versal as at present.\*

All this while the law of Escheat, coæval with the reign of the Con-

\* II. Comm. ch. 1.



queror, dwelt upon as a subject of importance in the reign of Henry the Second,\* touched upon by a numerous series of statutes, reaching down as low as Edward the Sixth, recognised by decisions of so recent a period as the late reign,† exists in indisputable vigour; although the facility of tracing out heirs in these times of universal and instantaneous communication, added to the want of an administrative establishment adapted to the collection of such a branch of revenue, prevent it from being noticed, in its present state, in the account-book of finance.

\* Glanville, l. vii. c. 17.

† Atkyns' Reports.



## § 10. BLACKSTONE.

**I**S *opinion* worth resorting to? A poor warrant, after the *fiat* of utility, written in characters so legible. In morals, in politics, in legislation, the *table of human feelings*, is, I must confess, to me what the Alcoran was to the good Mussulman: opinions, if unconformable to it, are false; if conformable, useless. Not so to many a worthy mind: for their satisfaction then, even this muddy source of argument shall not remain unexplored. Shall Blackstone then be our oracle? Blackstone, the most revered of oracles though the latest?—From him we have full licence: from him we have a latitude, outstretching, and that even to extravagance,



vagance, the utmost extent which either humanity or policy would permit us to assume. But let us hear him in his own words.

Blackst. Comm. II. 12. “ Wills,  
“ therefore (says he) and testaments,  
“ rights of inheritance and succeſ-  
“ ſions, are all of them creatures of  
“ the civil or municipal laws, and  
“ accordingly are in all respects regu-  
“ lated by them; every diſtinct  
“ country having different ceremo-  
“ nies and requiſites to make a testa-  
“ ment completely valid: neither  
“ does any thing vary more than the  
“ right of inheritance under different  
“ national eſtabliſhments. In Eng-  
“ land particularly, this diverſity is  
“ carried to ſuch a length, *as if it*  
“ *had been meant to point out the power*  
“ *of the laws in regulating the ſucceſ-*  
“ *ſion to property, and how futile every*  
“ *claim*



“ claim must be that has not its foun-  
 “ dation in the positive rules of the  
 “ state. In personal estates the fa-  
 “ ther may succeed to his children ;  
 “ in landed property he can never be  
 “ their immediate heir, by any the  
 “ remotest possibility : in general  
 “ only the eldest son, in some places  
 “ only the youngest, in others all the  
 “ sons together, have a right to suc-  
 “ ceed to the inheritance : in real  
 “ estates males are preferred to fe-  
 “ males, and the eldest male will  
 “ usually exclude the rest : in the  
 “ division of personal estates, the  
 “ females of equal degree are ad-  
 “ mitted together with the males,  
 “ and no right of primogeniture is  
 “ allowed.”

Thus far our Apollo.—Legatees,  
 we see, are nothing to him : he sacri-  
 fices parents to us, and even chil-  
 dren :



dren: he sees not that children are not only *expectants*, but *co-occupants*. No sympathy for disappointed expectation; no feeling for beggared opulence; no regard for meritorious service; no compassion for repulsive infirmity, obliged to forego assistance, or to borrow it of selfish hope. The law, his idol, has no bowels; why should we? The rights of legatees, the rights of children, are mere creatures of the law: as if the rights of occupants were any thing more. Of wills or even succession, he knows no use, but to prevent a scramble. The business of succession is a theatre which the laws of nations have pitched upon, as it were in concert, for the exhibition of caprice: none with greater felicity than the law of England:—she has her views in this, and they are always wise ones:—to



insult the subject, to shew him what arbitrary power is, and to teach him to respect it.

“ This one consideration (continues he) may help to remove the  
“ scruples of many *well-meaning* persons, who set up a *mistaken* conscience in opposition to the rules of  
“ law. If a man *disinherits his son*,  
“ by a will duly executed, and leaves  
“ his estate to a stranger, there are  
“ many who consider this proceeding  
“ as *contrary to natural justice*: while  
“ others so scrupulously adhere to the  
“ supposed intention of the dead,  
“ that if a will of lands be attested  
“ by only *two* witnesses instead of  
“ *three*, which the law requires, they  
“ are apt to imagine that the heir is  
“ bound in conscience to relinquish  
“ his title to the devisee. But both  
“ of



“ of them *certainly proceed upon very*  
“ *erroneous principles*: as if, on the  
“ one hand, the son had by *nature* a  
“ right to succeed to his father’s  
“ lands; or as if, on the other hand,  
“ the owner was by nature intitled  
“ to direct the succession of his pro-  
“ perty after his decease. Whereas,  
“ the *law of nature* suggests, that  
“ on the death of the possessor the  
“ estate should again become com-  
“ mon, and be open to the next  
“ occupant, unless otherwise ordered  
“ for the sake of civil peace by the  
“ positive law of society.”

“ The right of inheritance, (says  
“ he but two pages before) or de-  
“ scent to the children and relations of  
“ the deceased, seems to have been  
“ allowed much earlier than the  
“ right of devising by testament.



“ We are apt to conceive at first  
 “ view that it has *nature* on its side :\*  
 “ yet we often *mistake* for *nature* what  
 “ we find established by long and  
 “ inveterate *custom*.† It is certainly  
 “ a *wise and effectual*, but clearly a  
 “ *political establishment* ;‡ since the  
 “ *permanent* right of property, § vest-  
 “ ed in the ancestor himself, was

\* Quere, What is “ *nature* ? ”

† Quere, The difference between “ *nature* ”  
 here and “ *custom* ? ”

‡ Quere, What “ *establishments* ” there are in  
 the world, besides “ *political* ” ones ? Quere,  
 What signifies whether a “ *political establishment* ”  
 be a “ *natural* ” one or no, so long as it is “ a  
 “ *wise and effectual* ” one ?

§ If an “ *impermanent* ” right is a “ *natural* ”  
 one, quere, at what o’clock does it cease to be  
 so ? — If it is *natural* a right of property should  
*commence*, how comes it to be *unnatural* it  
 should *continue* ?



“no *natural*, but merely a *civil*  
“right.”\*

What we learn from all this is, that so long as a man can find a pretence for getting rid of the phrase *contrary to natural “justice,”* there is no harm in his children’s being left by him to starve: and that those who would make a “*conscience*” of leaving their children thus to starve, are “*well-meaning*,” but “*mistaken*” people. Quere, who is this same Queen “*Nature*,” who makes such stuff under the name of laws? Quere, in what year of her own, or any body else’s reign, did she make it, and in what shop is a copy of it to be bought,

\* Quere, What signifies whether it was a “*natural right*” or no? Quere, What sort of a thing is a “*natural right*,” and where does the *maker* live, particularly in *Atheist’s town*, where they are most rife?

that



that it may be burnt by the hands of the common hangman, and her Majesty well disciplined at the cart's tail?

It being supposed, in point of *fact*, that the children have or have not a right, of the sort in question, given them by the *law*, the only rational question remaining is, whether, in point of *utility*, such a right *ought* to be given them or not?—To talk of a *Law of Nature*, giving them, or not giving them a *natural right*, is so much sheer nonsense, answering neither the one question nor the other.

F I N I S.



Cyprus







Bentham, Jeremy,

Supply without Burthen; Or Escheat vice Taxation being a Proposal For A  
Saving In Taxes By An Extension of the Law of Escheat: Including  
Strictures on the Taxes On Collateral Succession, Comprized in the Budget  
of 7th Dec. 1795 ; to which is prefixed, (Printed in 1793, and now first  
published,) A Protest Against Law Taxes: Shewing The Peculiar

London 1795

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